

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

STEVEN GRAHAM,	)	
	)	
Plaintiff	)	
v.	)	Civil No. 95-0172-B
	)	
JOSEPH LEHMAN, et al.,	)	
	)	
Defendants	)	

***RECOMMENDED DECISION***

This action is brought pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants have violated Plaintiff's right to be free from cruel and unusual punishment for their failure to provide him with a medically-necessary diet at the Maine State Prison ["MSP"]. Defendant Beverly is a physician responsible for providing medical care to inmates at MSP. Defendant Welch is the Administrator of the Medical Facility for MSP. These Defendants now move for summary judgment.

The Motion for Summary Judgment was filed on February 2, 1996. The time for responding to the Motion has expired, and Plaintiff has not filed an objection. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 19(c). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, we will examine the merits of Plaintiff's Motion for Summary Judgment based on Plaintiff's Statement of Material Facts, which are as follows.

### *Statement of Facts*

1. The plaintiff, Steven Graham, suffers from Type I Diabetes Mellitus, a metabolic disease in which loss of pancreatic insulin production results in excessively high blood sugar levels if not appropriately treated. *Beverly Aff.*, ¶ 6.

2. Treatment for Steven Graham's condition consists of insulin, administered either by injection or orally, complemented by diet control and exercise. *Beverly Aff.*, ¶ 6.

3. Throughout Steven Graham's incarceration at the Maine State Prison, the medical staff has engaged in ongoing, conscientious, and aggressive efforts to control his blood sugars. Mr. Graham's blood sugar levels have been routinely checked, and have been controlled by adjustments to his insulin therapy and the administration of other medications. *Beverly Aff.*, ¶¶ 7, 9.

4. Steven Graham has also been adequately educated regarding the need for, and the methods of, dietary control of his diabetes. He has attended a diabetes education workshop conducted by a nutrition consultant. That same consultant has prepared a daily meal plan for Mr. Graham, which Mr. Graham reviewed and which provided him with adequate guidance for the selection of a diet appropriate for his condition. Mr. Graham has also received "exchange lists" which provide sound and appropriate advice for self-management by diabetics on topics including food selection and food quantities. *Beverly Aff.*, ¶¶ 8, 10.

5. The insulin therapy and dietary education provided to Steven Graham have at all times been sound and sufficient. The medical professional staff at the Maine State Prison has not ignored Mr. Graham's complaints. The medical attention received by Mr. Graham at least equals, if it does not exceed, the amount and quality of medical attention typically available to non-incarcerated persons in the public at large. Furthermore, with respect to diet, the information

provided to Mr. Graham is both appropriate and sufficient, and it equals what is available to non-incarcerated diabetics who are responsible for self-management. *Beverly Aff.*, ¶ 11.

6. The Maine State Prison at Thomaston, where Steven Graham is incarcerated, has a food service operation which offers an unusually great variety of food choices from which the general inmate population may choose their foods. *Welch Aff.*, ¶ 4.

7. The menus offered in the cafeteria at the prison in Thomaston are reviewed and approved by a nutrition consultant and registered dietician who ensures, among other things, that the food choices available are sufficient to meet the nutritional needs of diabetics among the inmate population. *Welch Aff.*, ¶ 5.

8. The practice of the Maine State Prison is not to provide diabetics among the inmate population at Thomaston with individualized food trays, but rather to provide adequate food choices for them, and to provide them with sufficient education to allow them to effectively manage their own diets. *Welch Aff.*, ¶ 6.

9. Since September, 1994, none of the several diabetics in the Maine State Prison other than Steven Graham have reported any difficulty in obtaining appropriate diabetic food choices. *Welch Aff.*, ¶ 7.

10. Steven Graham has been a noncompliant patient in several respects. He has, on various occasions, refused to take insulin as prescribed, to present for blood sugar checks as required, to take other medication as prescribed, and to comply with dietary recommendations. *Beverly Aff.*, ¶ 12.

### ***Discussion***

Defendants move for summary judgment on the grounds of qualified immunity. Accordingly, they argue their actions do not violate Plaintiff's "clearly established . . . rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Defendants specifically assert that it is not yet "clearly established" that a failure to provide individualized food trays for diabetic inmates amounts to cruel and unusual punishment, and that their actions are not, in any event, deliberately indifferent to Plaintiff's medical needs.

We see no need to elaborate upon the qualified immunity analysis in this case. Plaintiff's claim of inappropriate medical care rises to the level of a constitutional violation only, as Defendants argue, if they exhibited "deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner's medical treatment." *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993).

Plaintiff has presented just such a case. The record reflects that Defendants have provided regular medical care for Plaintiff's diabetes, including nutrition counseling and medication, when appropriate. Plaintiff's complaint is apparently that he should not be responsible for monitoring his own diet. That Defendants disagree with him on this point does not mean they are deliberately indifferent to his serious medical needs. Judgment is appropriately entered for these Defendants on Plaintiff's Complaint.

### ***Conclusion***

Accordingly, I hereby recommend Defendants Beverly and Welch's Motion for Summary Judgment be GRANTED.

### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated in Bangor, Maine on March 6, 1996.